

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SIMPLYFRESCO, LLC,

Plaintiff,

vs.

LA TORTILLA FACTORY INC.,

Defendant.

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SA-20-CV-00893-FB

ORDER

Before the Court in the above-styled cause of action is SimplyFresco's Rule 12(b)(6) Motion to Dismiss [#12], which argues that La Tortilla Factory fails to state a counterclaim against SimplyFresco. In response to the motion, La Tortilla Factory filed an Amended Counterclaim [#19]. The Court will therefore dismiss as moot SimplyFresco's Motion to Dismiss in light of the amended pleading.

IT IS THEREFORE ORDERED that SimplyFresco's Rule 12(b)(6) Motion to Dismiss [#12] is **DISMISSED WITHOUT PREJUDICE** to refiling an amended motion challenging the amended pleading.

SIGNED this 16th day of October, 2020.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE